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In the Supreme Court of the United States

OCT 5 1945

OCTOBER TERM, 1945

No. 344

ARTHUR L. BELL, Individually, and as an Associate of and Division Superintendent of "Mankind United", a voluntary association, for and in behalf of said "Mankind United" and the Associates thereof; MAUDE ASKEW, EUGENE WADSWORTH BROWN, J. FRED BURKEY, LAWRENCE COOK, A. RAY ELSEA, JACOB GLOCKLER, BAY BURNS SHARP, SHANNA JAKEMAN, PAULINE KELSO, MAX THEODORE MILLER and HOMER G. WILCOX, *Petitioners*,

vs.

R. B. HOOD, THEODORE CRUISE, PHILIP BOWSER, GEORGE M. LANGDON, WILLIAM GIBSON, EUGENE GREER, J. H. ANGELL, J. SECRIST, JOHN ROCHE, MALCOM C. POWRIE, CECIL C. HUMPHREYS, A. F. SCHEIMERHORN, WILLIAM BRANIGAN, JOHN DOE WOLFE, DON C. SWANSON, CARL B. SHERMAN, EARL K. ADAMS, HOWARD H. DAVIS, ROBERT T. PUGH, EDWARD A. EURBUSH, O. WILSON FARRELL, DENNIS G. SMITH, HERBERT J. NUBLISH, ROBERT O'KEEFE, EARL P. STATEN, ROBERT MONTGOMERY, NEWELL WILLIAMS, RICHARD DOE DEVINE, RICHARD DOE BULLFRASS, JOHN C. NORRIS, WALT BUTLER, MIKE CASSIDY, PAUL J. O'FARRELL, JOHN W. SCHALLER, LOUIS D. WINE, MERLE ARMSTRONG, JOHN PHILIP MANTON and FRANCES JOHN GOOD, *Respondents*.

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

BRIEF OF NORTHERN AND SOUTHERN CALIFORNIA BRANCHES OF THE AMERICAN CIVIL LIBERTIES UNION, AMICI CURIAE.

WAYNE M. COLLINS,
Mills Tower, San Francisco 4, California,
Counsel for Amici Curiae.

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BRIEF OF NORTHERN AND SOUTHERN CALIFORNIA BRANCHES OF THE AMERICAN CIVIL LIBERTIES UNION, AMICI CURIAE.

QUESTION PRESENTED.

Did the District Court below have jurisdiction to entertain petitioners' damage suit for an infringement of their constitutional rights brought against federal officers who, under a claim of statutory authority, acted in excess of their actual authority but, in the course of their employment and in furtherance of the official purposes of the bureau they serve in abridging those rights?

NATURE OF CASE.

The complaint alleges the defendants were federal officers who, pursuant to a conspiracy so to do, violated the basic civil rights and liberties of the citizen plaintiffs guaranteed by the Constitution. It alleges that although these officers acted "beyond their authority" (par. IX of Complaint, R. vol. 1, p. 8) they acted under a claim of federal authority. (See par. 1 of the complaint where it is alleged they claimed "to have acted under and by virtue of the provisions of Sections 299 and 300a of Title 5, U. S. Code".) Consequently, the tenor of the complaint is that although they exceeded their authority they nevertheless did what they did in the course of their employment and in furtherance of the purposes of the federal bureau they serve. The acts complained of were the forcible seizure of the persons of petitioners and of their properties. The seizure of the persons was to exact oral evidence from them and the seizure of their properties was to obtain documentary evidence. The petitioners were awaiting

trial upon an indictment charging them with a federal offense at the time. The officers abridged the petitioners' rights safeguarded by the 4th and 5th Amendments by illegally exacting and obtaining the said evidence for the purpose of using it against the petitioners at the criminal trial which was scheduled to be heard. The complaint seeks damages from the defendants. The District Court below dismissed the cause on its own motion for what it deemed was a want of jurisdiction. The Circuit Court below affirmed the dismissal for what it also viewed as not presenting a substantial federal question.

THE AGENTS ACTED IN FURTHERANCE OF OFFICIAL PURPOSES.

Under the law of agency the master or principal is responsible for the acts of his agents which exceed their actual authority or deviate from the ordinary course of their employment so long as their acts are in furtherance of the master's business or purposes. (See *Garretzen v. Duenckel*, 50 Mo. 104, 11 Amer. Rep. 405, the leading case on the subject and announcing the doctrine, and 3 *C. J. S.*, p. 187, Sec. 255.) So likewise are the agents liable for their torts so committed. (See 3 *C. J. S.*, p. 129, Sec. 20, and cases there cited.) It is settled that persons injured by agents so acting may hold both the principal and agents responsible or, at their election, sue either for damages. Consequently, if the government as the master or principal had been made a proper party defendant in the cause below no

question of jurisdiction would have arisen for no Court other than a Federal Court has jurisdiction over the federal government. In such a case the respondents herein probably would concede the jurisdiction of the Court below. If the District Court would have had jurisdiction to entertain a suit for damages against the master it follows it likewise would have had jurisdiction over the servants.

THE DISTRICT COURT HAD IMPLIED AND EXPRESS JURISDICTION.

The judicial power of the federal government extends to all cases, in law and equity, arising under the Constitution and laws of the United States. (U. S. *Constitution*, Art. I, Sec. 2.) The vesture of judicial power in the Supreme Court and in such inferior Courts as Congress has established under Article III vested in these Courts such express and implied judicial power, within the federal field, as was essential to their functions and operations, consequently, the substratum of common law was included in the grant. Without congressional legislation setting up limits to their respective fields of operation these Courts would function as common law Courts in their field. Beyond the boundaries marked out by Congress these inferior Courts may not trespass but within that field they exercise whatever jurisdiction, express and implied, the Constitution grants or Congress has allotted to them.

The Constitution does not exclude the District Courts from taking jurisdiction of tort actions brought against federal officers for violation of its provisions. We assert this jurisdiction resides in them by express grant and also by implication under the constitutional grant of power. Congress has not prevented these Courts from exercising this jurisdiction. It could have excluded them from entertaining such suits had it expressed such an intention. It could have lodged this jurisdiction in other tribunals or withheld it from any Court save the Supreme Court. It has not seen fit to do this. Instead, and following the constitutional objective, it enacted 28 U.S.C.A., Section 41(1), wherein it gave a general grant of original jurisdiction to the District Courts in all cases arising "under the Constitution or laws of the United States". This statute, we contend, expressly gave jurisdiction over the cause to the District Court below.

This general grant includes jurisdiction over tort actions involving a deprivation of constitutional rights. The fact that Congress has not, in precisely worded legislation, particularly set forth that the District Courts shall assume jurisdiction in tort actions commenced against federal officers does not divest them of jurisdiction. The fact that it has expressly stated that jurisdiction may be exercised by these Courts in certain types of cases, for instance, those specified in 28 U.S.C.A., Sections 41(2) to 41(28), removes doubt on a few matters of which they may take jurisdiction. However, it is no argument against their exercising jurisdiction in tort and other cases not mentioned

therein. Impliedly, under the constitutional grant of power, and expressly, thereunder and under 28 U.S.C.A., Section 41(1), the District Courts would seem to have jurisdiction to entertain damage suits for the torts of federal officers committed against federal law. Especially must this be true where, in furtherance of federal purposes, the officers, in their eagerness to serve their bureau, overstep their authority and act injudiciously. Such suits necessarily arise "under the Constitution or laws of the United States" and not elsewhere. In the instant case the federal question does not lurk in the background: it looms in the foreground.

THE SOVEREIGN GUARANTEEING RIGHTS IS NECESSARILY BOUND TO PROTECT THOSE RIGHTS.

It would appear to be axiomatic that the judicial procedure for the redress of injury inheres in the sovereign that guarantees the stated rights of which injured persons have been deprived. The constitutional grant of power to the judicial branch of government carried with it the implied power to redress wrongs arising thereunder pursuant to common law principle and practice. Actions in trespass would lie at common law in the forum of the sovereign for violations of the type of fundamental rights involved in the instant suit as also would actions in case and in special assumpsit. Congress has not prohibited the District Courts from assuming jurisdiction in tort actions and it has not delegated jurisdiction to State Courts to entertain suits for violations of constitutional rights. A State,

in pursuing its own or the federal design, may give a cause of action in its own forum for damages suffered by a citizen by reason of the wrongful deprivation of his federal guaranties. It is not compelled to do so. A federal officer while in the furtherance of what he determines is his master's business can not be held responsible by a State which may view his acts in another light. See *In re Neagle*, 135 U. S. 1. This Court upholds such acts and thus protects the federal government from outside interference which might arrest its progress. If an agent of the federal government is protected by the shield of the Constitution in such a case can it be said that its sword cannot protect a citizen against invasion of the rights it expressly guarantees? Why should the federal government shirk its duty by closing its doors to those whose federal rights are violated? Is it powerless to preserve the very substantial rights it is supposed to safeguard to citizens?

It would seem that the Federal Courts, pursuant to the constitutional grant and the provisions of 28 U.S. C.A., Section 41(1), would have jurisdiction herein under the language of *Ames v. Kansas*, 111 U. S. 449, at 470. There this Court, in holding the District Court had jurisdiction over an action commenced by a State in its own tribunal, laid down a test for federal jurisdiction in the following words:

> "* * * if that violation may be such as essentially to affect the Constitution and the laws, such as to arrest the progress of government in its constitutional course, why should these cases be excepted

> from that provision which expressly extends the judicial power of the Union to *all* cases arising under the Constitution and laws? * * * and we think the judicial power, as originally given, extends to all cases arising under the Constitution or a law of the United States, whoever may be the parties."

The fact that a State may make violations of federal guaranties compensable in its own tribunals is not a substitute for a federal remedy. It is intended as an additional remedy that promotes both state and federal purposes. The respondents' contention apparently is that if the State gave no remedy to the petitioners none whatever was available. In short the contention is simply that the federal government is paralyzed, helpless and unable to protect its guaranties.

THE FEDERAL COURTS ARE NOT IMPOTENT.

If the federal judiciary is not fully empowered and competent to defend the constitutional guaranties, either expressly or impliedly, then our federal government is not a system of enforceable law but depends simply upon the moral force of its administrators and society, that is, upon social amenities and tabus. Lenin and Trotsky, accepting the Marx-Engels formula, had a conviction that socialism, ultimately ripening into communism, might be guided by such forces. However, we cannot believe that humanity is yet prepared to accept such notions. If humanity be not prepared how much less then is America. We believe the Federal

Courts are empowered to prevent violations of substantive constitutional provisions and to repair invasions of citizens' rights thereunder by the resort to such types of force as the judicial machinery affords.

The respondents, having acted indiscreetly in their impatience to serve governmental purposes, now assert a right to escape liability for having flouted the Constitution. They argue that Congress has not given jurisdiction to the District Courts to entertain the suit for damages and that the federal judiciary is impotent to redress the wrongs perpetrated. They contend that the petitioners' cause of action does not arise under the Constitution or laws of the United States and that, therefore, the District Court below lacked jurisdiction of the case. They urge that the relief the petitioners seek, if any be available, must necessarily be sought for in a State Court, that is, in the forum of a different sovereign.

We are not persuaded that the judicial branch of the federal government has been so crippled that it is unable to redress wrongs committed by its agents under color of authority. How a State Court could assume jurisdiction over federal officers acting under color of federal authority and in furtherance of federal purposes, albeit in excess of their actual authority, is not apparent. If a State Court does not have power to prevent such acts for want of jurisdiction it would lack power to punish their commission or to compensate those injured for like want of jurisdiction. Attention is also drawn to the fact that neither the Constitution nor Congress has deprived the Federal

Courts of such jurisdiction or delegated jurisdiction to the State Courts. The respondents' argument evidently is that the State may shunt jurisdiction to the Union and the Union to the State. Perhaps they hope the petitioners' rights may be sidetracked by such action and the petitioners be driven mad while searching for the tribunal which might have jurisdiction of the cause.

CONCLUSION.

If our Federal Courts have no jurisdiction to redress violations of the Constitution and the State Courts choose to ignore such violations then the significance of the constitutional guaranties amounts to—nothing. If they refuse to exercise the jurisdiction the Constitution has lodged in them and the Congress has confirmed it is obvious the federal jurisdiction has been whittled down by those to whose charge the preservation of the fundamental rights of citizens has been committed. The doctrine of judicial convenience may be offered as the excuse for the whittling. The remedy, however, does not lie in a refusal to assume and exercise the jurisdiction that resides in the Federal Courts but in seeking congressional relief from the burden of a higher number of cases by requesting the establishment of a higher number of Federal Courts.

Much confusion reigns in the decisions covering the respective jurisdictions of the Federal and State Courts. More reigns in the reported judicial opinions

as to what is and what is not a case arising under the Constitution or laws of the United States. So long as this condition exists so long will the correct jurisdiction be doubtful to litigants whose remedies are involved. They ought not to be placed in a position of uncertainty in the choice of a judicial forum. We urge, therefore, that this Court grant the petition for the writ of certiorari and, upon a review of the case, resolve the doubts thereon by reversing the judgment below.

Dated, San Francisco, California,
October 1, 1945.

Respectfully submitted,
WAYNE M. COLLINS,
Counsel for Amici Curiae.

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SUPREME COURT OF THE UNITED STATES.

No. 344.—October Term, 1945.

Arthur L. Bell, Individually, and as an Associate of and Division Superintendent of "Mankind United," etc., et al., Petitioners,
vs.
R. B. Hood, Theodore Cruise, Philip Bowser, et al.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[April 1, 1946.]

Mr. Justice Black delivered the opinion of the Court.

Petitioners brought this suit in a federal district court to recover damages in excess of $3000 from the respondents who are agents of the Federal Bureau of Investigation. The complaint alleges that the Court's jurisdiction is founded upon federal questions arising under the Fourth and Fifth Amendments. It is alleged that the damages were suffered as a result of the defendants imprisoning the petitioners in violation of their Constitutional right to be free from deprivation of their liberty without due process of law, and subjecting their premises to search and their possessions to seizure, in violation of their Constitutional right to be free from unreasonable searches and seizures.[1] Re-

[1] The complaint stated in part:

"That on or about the 17th day of December, 1942, defendant R. B. Hood and each of the other defendants, unlawfully conspired with each other to act beyond their authority as said Federal Bureau of Investigation agents and police officers respectively, and agreed that they would abridge the Constitutional rights of the plaintiffs as guaranteed by the Fourth and Fifth Amendments to the Constitution of the United States to be free from the deprivation of liberty and property without due process of law, and to be free from unreasonable searches and seizures, and agreed unlawfully to simultaneously, in the early morning of December 18th, 1942, search the homes of the individual plaintiffs herein without any warrants of search or seizure, and unlawfully to seize the papers, documents and effects of said plaintiffs and of "Mankind United", and falsely to imprison the individual plaintiffs by unlawfully arresting some of the individual plaintiffs without a warrant of arrest and unreasonably to delay the taking of all the individual plaintiffs before a committing officer, in order to effectuate the unlawful searches and seizures aforesaid.

"That thereafter, and on the 18th day of December, 1942, the defendants and each of them, in order to carry out the terms and conditions of the

spondents moved to dismiss the complaint for failure to state a cause of action for which relief could be granted and for summary judgment on the grounds that the federal agents acted within the scope of their authority as officers of the United States and that the searches and seizures were incidental to lawful arrests and were therefore valid. Respondents filed affidavits in support of their motions and petitioners filed counter-affidavits. After hearing the motions the district judge did not pass on them but, on his own motion, dismissed the suit for want of federal jurisdiction on the ground that this action was not one that "... arises under the Constitution or laws of the United States ..." as required by 28 U. S. C. § 1331 (a). The Circuit Court of Appeals affirmed on the same ground. 150 F. 2d 96. At the same time it denied a motion made by petitioners asking it to direct the district court to give petitioners leave to amend their complaint in order to make it still more clearly appear that the action was directly grounded on violations of rights alleged to stem from the Fourth and Fifth Amendments. We granted certiorari because of the importance of the jurisdictional issue involved.

Respondents make the following argument in support of the district court's dismissal of the complaint for want of federal jurisdiction. First, they urge that the complaint states a cause of action for the common law tort of trespass made actionable by state law and that it therefore does not raise questions arising "under the Constitution or laws of the United States." Second, to support this contention, respondents maintain that petitioners could not recover under the Constitution or laws of the United States, since the Constitution does not expressly provide for recovery in money damages for violations of the Fourth and Fifth Amendments and Congress has not enacted a statute that does so provide. A mere reading of the complaint refutes the first contention and, as will be seen, the second one is not decisive on the question of jurisdiction of the federal court.

Whether or not the complaint as drafted states a common law action in trespass made actionable by state law, it is clear from

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illegal conspiracy aforesaid, and solely for the purpose of carrying out said terms and conditions, did arrest and imprison the individual plaintiffs herein and did search the homes of said plaintiffs, and seize and carry away books, papers and effects of said individual plaintiffs and of said 'Mankind United.'"

"... by reason of the deprivation of ... [their] ... Constitutional rights ... [plaintiffs had] ... suffered damages."

the way it was drawn that petitioners seek recovery squarely on the ground that respondents violated the Fourth and Fifth Amendments. It charges that the respondents conspired to do acts prohibited by these amendments and alleges that respondents' conduct pursuant to the conspiracy resulted in damages in excess of $3,000. It cannot be doubted therefore that it was the pleaders' purpose to make violation of these Constitutional provisions the basis of this suit. Before deciding that there is no jurisdiction, the district court must look to the way the complaint is drawn to see if it is drawn so as to claim a right to recover under the Constitution and laws of the United States. For to that extent "the party who brings a suit is master to decide what law he will rely upon and . . . does determine whether he will bring a 'suit arising under' the [. . . Constitution or laws] of the United States by his declaration or bill." *The Fair* v. *Kohler Die Co.*, 228 U. S. 22, 25. Though the mere failure to set out the federal or Constitutional claims as specifically as petitioners have done would not always be conclusive against the party bringing the suit, where the complaint, as here, is so drawn as to seek recovery directly under the Constitution or laws of the United States, the federal court, but for two possible exceptions later noted, must entertain the suit. Thus allegations far less specific than the ones in the complaint before us have been held adequate to show that the matter in controversy arose under the Constitution of the United States. *Wiley* v. *Sinkler*, 179 U. S. 58, 61-65; *Swafford* v. *Templeton*, 185 U. S. 487, 491-492. The reason for this is that the court must assume jurisdiction to decide whether the allegations state a cause of action on which the court can grant relief as well as to determine issues of fact arising in the controversy.

Jurisdiction, therefore, is not defeated as respondents seem to contend, by the possibility that the averments might fail to state a cause of action on which petitioners could actually recover. For it is well settled that the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction. Whether the complaint states a cause of action on which relief could be granted is a question of law and just as issues of fact it must be decided after and not before the court has assumed jurisdiction over the controversy. If the court does later exercise its jurisdiction to determine that the

allegations in the complaint do not state a ground for relief, then dismissal of the case would be on the merits, not for want of jurisdiction. *Swafford* v. *Templeton*, 185 U. S. 487, 493, 494; *Binderup* v. *Pathe Exchange*, 263 U. S. 291, 305-308.[2] The previously carved out exceptions are that a suit may sometimes be dismissed for want of jurisdiction where the alleged claim under the Constitution or federal statutes clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such a claim is wholly insubstantial and frivolous. The accuracy of calling these dismissals jurisdictional has been questioned. *The Fair* v. *Kohler Die Co., supra*, 228 U. S. at 25. But cf. *Swafford* v. *Templeton, supra*.

But as we have already pointed out the alleged violations of the Constitution here are not immaterial but form rather the sole basis of the relief sought. Nor can we say that the cause of action alleged is so patently without merit as to justify, even under the qualifications noted, the court's dismissal for want of jurisdiction. The Circuit Court of Appeals correctly stated that "the complaint states strong cases, and if the allegations have any foundation in truth, the plaintiffs' legal rights have been ruthlessly violated." Petitioners' complaint asserts that the Fourth and Fifth Amendments guarantee their rights to be free from unauthorized and unjustified imprisonment and from unreasonable searches and seizures. They claim that respondents' invasion of these rights caused the damages for which they seek to recover and point further to 28 U. S. C. § 41(1) which authorizes the federal district courts to try "suits of a civil nature" where the matter in controversy "arises under the Constitution or laws of the United States", whether these are suits in "equity" or at "law". Petitioners argue that this statute authorizes the Court to entertain this action at law and to grant recovery for the damages allegedly sustained. Respondents contend that the Constitutional provisions here involved are prohibitions against the federal government as a government and that 28 U. S. C. § 41(1) does not authorize recovery in money damages in suits against unauthorized officials who according to respondents are in the same position as individual trespassers.

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[2] For other cases discussing the distinction between questions going to the merits and those going to the jurisdiction, see the following: Illinois Central Railroad Co. *v.* Adams, 180 U. S. 28; Geneve Furniture Co. *v.* Karpen, 238 U. S. 254; and see Nashville & St. Louis Ry. *v.* Taylor, 86 Fed. 168.

Respondents' contention does not show that petitioners' cause is insubstantial or frivolous, and the complaint does in fact raise serious questions, both of law and fact, which the district court can decide only after it has assumed jurisdiction over the controversy. The issue of law is whether federal courts can grant money recovery for damages said to have been suffered as a result of federal officers violating the Fourth and Fifth Amendments. That question has never been specifically decided by this Court. That the issue thus raised has sufficient merit to warrant exercise of federal jurisdiction for purposes of adjudicating it can be seen from the cases where this Court has sustained the jurisdiction of the district courts in suits brought to recover damages for depriving a citizen of the right to vote in violation of the Constitution.[3] And it is established practice for this Court to sustain the jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the Constitution[4] and to restrain individual state officers from doing what the 14th Amendment forbids the state to do.[5] Moreover, where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief.[6] And it is also well settled that where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done.[7] Whether the petitioners are entitled to recover depends upon an interpretation of 28 U. S. C., § 41(1) and on a determination of the scope of the Fourth and Fifth Amendments' protection from unreasonable searches and deprivations of liberty without due process of law. Thus, the right of the petitioners to recover under their complaint will be sustained if

[3] Wiley *v.* Sinkler, *supra;* Swafford *v.* Templeton, *supra.* See also Brickerhouse *v.* Brooks, 165 Fed. 534, 543, in which a similar suit was held to be within the jurisdiction of the federal court.

[4] Philadelphia Co. *v.* Stimson, 223 U. S. 605; Hays *v.* Seattle, 251 U. S. 233; Pennoyer *v.* McConnaughy, 140 U. S. 1; City Railway Co. *v.* Citizens' Railroad Co., 166 U. S. 557; City of Mitchell *v.* Dakota Telephone Co., 246 U. S. 396, 407.

[5] Chicago B. & Q. R. Co. *v.* Chicago, 166 U. S. 226; see also Ex parte Virginia, 100 U. S. 339, 346, 347.

[6] Marbury *v.* Madison, 1 Cranch. 137, 162, 163; Texas & N. O. R. Co. *v.* Ry. & S. S. Clerks, 281 U. S. 548, 569, 570.

[7] See e. g. Dooley *v.* United States, 182 U. S. 222, and cases cited and discussed at 228-230; Board of Commissioners of Jackson County *v.* United States, 308 U. S. 343, 349-350.

the Constitution and laws of the United States are given uniform construction and will be defeated if they are given another. For this reason the district court has jurisdiction. *Gully* v. *First National Bank*, 299 U. S. 109, 112-113; *Smith* v. *Kansas City Title Co.*, 255 U. S. 180, 199-200.

Reversed.

Mr. Justice REED joins in the opinion and the result. He desires to add to the cases cited in note 7, *Barron* v. *Baltimore*, 7 Pet. 243, and *Burdeau* v. *McDowell*, 256 U. S. 465, 475.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES.

No. 344.—October Term, 1945.

Arthur L. Bird, Individually, and as an Associate of and Division Superintendent of "Mankind United," et al., Petitioners,
vs.
J. B. Hood, Theodore Cruise, Philip Bowser, et al.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[April 1, 1946.]

Mr. Chief Justice Stone and Mr. Justice Burton dissenting.

The district court is without jurisdiction as a federal court unless the complaint states a cause of action arising under the Constitution or laws of the United States. Whether the complaint states such a cause of action is for the court, not the pleader, to say. When the provision of the Constitution or federal statute affords a remedy which may in some circumstances be availed of by a plaintiff, the fact that his pleading does not bring him within that class as one entitled to the remedy, goes to the sufficiency of the pleading and not to the jurisdiction. *The Fair* v. *Kohler Die Co.*, 228 U. S. 22, 25; *Binderup* v. *Pathe Exchange*, 263 U. S. 291, 306-308, and cases cited. But where, as here, neither the constitutional provision nor any act of Congress affords a remedy to any person, the mere assertion by a plaintiff that he is entitled to such a remedy cannot be said to satisfy jurisdictional requirements. Hence we think that the courts below rightly decided that the district court was without jurisdiction because no cause of action under the Constitution or laws of the United States was stated.

The only effect of holding, as the Court does, that jurisdiction is conferred by the pleader's unfounded assertion that he is one who can have a remedy for damages arising under the Fourth and Fifth Amendments is to transfer to the federal court the trial of the allegations of trespass to person and property, which state a cause of action arising wholly under state law. For even though it be decided that petitioners have no right to damages under the Constitution, the district court will be required to pass upon the question whether the facts stated by petitioners give rise to a cause of action for trespass under state law. See *Hurn* v. *Oursler*, 289 U. S. 238.